

# Order

Michigan Supreme Court  
Lansing, Michigan

January 9, 2007

Clifford W. Taylor,  
Chief Justice

ADM File No. 2005-04

Michael F. Cavanagh  
Elizabeth A. Weaver  
Marilyn Kelly  
Maura D. Corrigan  
Robert P. Young, Jr.  
Stephen J. Markman,  
Justices

Proposed Amendment of  
Rules 3.963 and 3.965 of the  
Michigan Court Rules

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On order of the Court, this is to advise that the Court is considering an amendment of Rules 3.963 and 3.965 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter also will be considered at a public hearing. The notices and agendas for public hearings are posted at [www.courts.michigan.gov/supremecourt](http://www.courts.michigan.gov/supremecourt).

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[Additions are indicated by underlining and deletions are indicated by strikeover.]

## Rule 3.963 Protective Custody of Child

(A) [Unchanged.]

(B) Court-Ordered Custody.

- (1) The court may issue a written order authorizing a child protective services worker, an officer, or other person deemed suitable by the court to immediately take a child into protective custody when, upon presentment of proofs as required by the court, the judge or referee has reasonable grounds to believe that conditions or surroundings under which the child is found are such as would endanger the health, safety, or welfare of the child and that remaining in the home would be contrary to the welfare of the child. ~~When appropriate,~~ At the time it issues the order or as provided in 3.965(D), the court shall make a judicial determination that reasonable efforts to prevent removal of the child have been made or are not required. The court may also include in such an order authorization to enter specified premises to remove the child.

(2)-(3)[Unchanged.]

(C) [Unchanged.]

#### Rule 3.965 Preliminary Hearing

(A)-(C)[Unchanged.]

(D) Pretrial Placement; Reasonable Efforts Determination. In making the reasonable efforts determination under this subrule, the child's health and safety must be of paramount concern to the court.

(1) When the court has placed a child with someone other than the custodial parent, guardian, or legal custodian, the court must determine whether ~~the agency has made~~ reasonable efforts to prevent the removal of the child have been made or that reasonable efforts to prevent removal are not required. The court must make this determination at the earliest possible time, but no later than 60 days from the date of removal, and must state the factual basis for the determination in the court order. Nunc pro tunc orders or affidavits are not acceptable.

(2) [Unchanged.]

(E) [Unchanged.]

Staff Comment: Revised Paragraph of staff comment as it pertains to Rule 3.963 from the order dated October 24, 2006: The amendment of MCR 3.963(B)(1) reflects the reality that Family Division judges or referees are not always presented with a petition when a request is made to remove a child from the home. In emergency circumstances, a police officer or social worker may seek the court's permission to remove a child from a home, but will not have an opportunity to draft a petition before seeking the child's removal. Other changes require orders authorizing the removal of a child to be in writing. The amendment also clarifies that the court should make a "reasonable efforts" finding at the child's removal, or within 60 days of the child's removal under MCR 3.965, or make a finding that "reasonable efforts" are not required.

Revised Paragraph of staff comment as it pertains to Rule 3.965 from order dated October 24, 2006: The amendments of MCR 3.965(D)(2) conform the rule language to that of the recent amendments of the "reasonable efforts" language in MCL 712A.19a, as amended by 2004 PA 473, and make its language consistent with the proposed

“reasonable efforts” language in MCR 3.976(B)(1). The amendments add language to clarify that a court can determine that ~~an agency has made~~ reasonable efforts to prevent removal have been made or can determine that reasonable efforts to prevent removal are not required due to aggravated circumstances.

Revised Paragraph of staff comment as it pertains to Rule 3.972 from order dated October 24, 2006: The amendments of MCR 3.972 conform the rule language to the requirements of the Adoption and Safe Families Act and foster compliance with the timing requirements of that act, thereby helping to ~~ensure that children~~ increase the possibility that children in foster care will receive federal funding. The amendments require that a review hearing be held within 182 days of a child’s removal from the home, even if the trial in the proceeding has not been completed.

The staff comment is not an authoritative construction by the Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on these proposals may be sent to the Supreme Court Clerk in writing or electronically by May 1, 2007, at P.O. Box 30052, Lansing, MI 48909, or [MSC\\_clerk@courts.mi.gov](mailto:MSC_clerk@courts.mi.gov). When filing a comment, please refer to ADM File No. 2005-04. Your comments and the comments of others will be posted at [www.courts.mi.gov/supremecourt/resources/administrative/index.htm](http://www.courts.mi.gov/supremecourt/resources/administrative/index.htm).



I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

January 9, 2007

*Corbin R. Davis*  
Clerk